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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 9 (c) of the agenda

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS: GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME

Joint written statement* submitted by Centre Europe-Tiers Monde, a non-governmental organization in general consultative status, and the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 July 2000]

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* This written statement is issued, unedited, as received from the submitting non-governmental organizations.

I. On 2 June 2000, Ms. del Ponte told the Security Council that she had decided not to open an investigation into the complaints against the North Atlantic Treaty Organization (NATO). The grounds for that decision can be found in the "Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia". Ms. del Ponte supported the contents and conclusions of the report.

The Committee reaches the same conclusion on all the issues raised: there are no grounds for initiating an investigation. Chapter IV (Assessment) of the report is analysed below.

II. Damage to the environment. The Committee (para. 16) cites the report by the Balkan Task Force established by the United Nations Environment Programme (UNEP), according to which the conflict did not cause an ecological catastrophe affecting the Balkans as a whole but environmental contamination caused by the conflict had been identified in some sites.

The damage was widespread (it occurred in various regions), long-term (if immediate action is not taken, according to the Task Force, there will be damage to health and the environment) and severe.

The subjective (a deliberate attack) and objective (environmental damage causing, or that may be expected to cause, widespread, long-term and severe damage to the natural environment) elements of the crime are therefore present (arts. 35 (3) and 55 (1) of Protocol I to the Geneva Conventions).

III. Use of depleted-uranium projectiles. The Committee states that there is no specific treaty ban on the use of depleted uranium (para. 26).

Although there is disagreement over the effects of depleted uranium, there are official studies (which the Committee does not mention) on the serious consequences arising from its use, including those suffered by United States soldiers in the Gulf war. Articles 35 (3) and 55 (1) of Protocol I - on methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment - are thus perfectly applicable to this case. Naturally, the Committee omitted to mention the disturbing report on the subject by Mr. Bakary Kante, senior adviser to the Director-General of UNEP, which was never issued officially, but which is known to all.

IV. Use of cluster bombs. The Committee's report acknowledges (para. 27) that there is a strong trend to equate the bomblets from inside cluster bombs which do not explode when they hit the ground with anti-personnel landmines (which are prohibited by the 1997 Ottawa Convention). Although the Committee does not say so, it is clear that article 36 of Protocol I can be applied to cluster bombs, by linking it to the Ottawa Convention.

The Committee rejects the application of case law from the International Criminal Tribunal for the Former Yugoslavia (the Martic case, 8 March 1996, para. 18) on the use of cluster bombs, as in its judgement NATO did not use the cluster bombs in the same fashion as in the Martic case. It can only be deduced from this that there is a "bad" and a "good" way to use these bombs, even though NATO used them in all circumstances, including in attacks on civilians.

V. Legal issues related to target selection. On this point, the Committee tries to establish which targets may be considered as military ones and which not, citing article 52 (para. 2 only) of Protocol I and various opinions (paras. 35 ff.).

At the end of paragraph 45, the Committee points out that at the summit in Washington on 23 April 1999, NATO leaders decided to "intensify the air campaign by expanding the target set to include military-industrial infrastructure, media, and other strategic targets".

In paragraph 46, the Committee quotes a NATO report which states that the objective of the bombing was to weaken Serb military capabilities, both strategically and tactically. "Strikes on tactical targets ... had a more immediate effect in disrupting the ethnic cleansing of Kosovo. Strikes against strategic targets ... had [a] long-term and broader impact on the Serb military machine".

No honest military person would say that the "tactical" targets could be hit from an altitude of 5,000 metres or using guided missiles without a wide margin of error.

The Committee says that some of the targets listed are clearly military targets but that the precise scope of the "military-industrial infrastructure, media, and other strategic targets" and "government ministries and refineries" is unclear.

According to the Committee's logic, the NATO bombings hit some targets that were clearly military targets, others that were doubtful or unclear, and others that were civilian targets hit by "mistake".

With regard to the doubtful or unclear targets, the Committee refrained from quoting article 52 (3) of Protocol I: "In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used."

On the question of NATO military strategy, the Committee asserts that the judgement of the International Criminal Tribunal for the Former Yugoslavia in the Kupreskic case (14 January 2000, para. 526) is not applicable (para. 52).

The Tribunal said in the Kupreskic case that where there was a series of attacks of questionable lawfulness, there was a cumulative effect that amounted to an unlawful action.

The Committee maintains that a series of lawful attacks does not amount to an unlawful action.

At a conference held at the University of Geneva on 15 June 2000 and attended by several judges from the International Criminal Tribunal for the Former Yugoslavia, the Prosecutor, Ms. Carla del Ponte, Professor Antonio Cassese, until recently a judge at the Tribunal, and other jurists, Professor Cassese, as well as expressing his complete disagreement with the legal arguments contained in the Committee's report, said that the report, in its interpretation of the Kupreskic judgement, treated the three judges who handed it down as incompetents and implied that they might as well go home (this is an almost literal quotation).

VI. General assessment of the bombing campaign. In paragraph 54, the Committee compares the number of attacks and bombs dropped with the number of civilian casualties (estimated at 500), and concludes that those figures do not indicate that NATO conducted its campaign in such a way as to cause substantial civilian casualties, either directly or indirectly.

The Committee concludes in paragraph 55 that the NATO attacks were aimed at striking targets it perceived as legitimate military targets. The Committee believes (para. 56) that the height from which the attacks were carried out was not in itself unlawful, but that NATO had a duty to take practicable measures to distinguish military objectives from civilian ones.

While acknowledging that from an altitude of 15,000 feet (almost 5,000 metres) the target could not be verified with the naked eye, the Committee concludes that the use of modern technology made verification effective in the vast majority of cases.

This statement is contradicted by the data contained in the Committee's own analysis of specific cases, from which it emerges that NATO, on various occasions and for no valid reason, did not use the available technology to verify the military nature of the targets.

VII. Specific incidents. The Committee begins by stating (para. 57) that it had not come across any incident that would justify opening an investigation, and analyses five incidents which, in its view, are the most problematic.

1. Attack on a passenger train on a bridge (Grdelica). The Committee acknowledges that the videos of the attack (presented by General Wesley Clark at a press conference to justify the "mistake") were said to have been tampered with (the pictures had been speeded up 2.7 times) in order to hide the responsibility of the attacker. However, the Committee fails to mention that the tampering was acknowledged as a "normal speeding-up" at a press conference attended by Admiral Quigley in the Office of the Deputy Secretary of Defence in Washington on 6 January 2000.

Moreover, even though the Committee tries to justify the "mistake" (following the arguments of NATO), it does not attempt to justify dropping the second bomb when the attacker had already seen the train, and simply says the attack is not worth investigating (para. 62), ignoring article 57 of Protocol I ("Precautions in attack"), particularly paragraph 2 (b), beginning "An attack shall be cancelled or suspended ...".

2. Attack on a convoy of Albanian refugees. Five attacks were carried out one after the other in broad daylight during a period of an hour-and-a-half (para. 65). The Committee acknowledges that it received a report claiming that Yugoslav television had a recording of the conversation between the pilots showing that they knew the convoy was made up of civilians (para. 66). Although it quotes the NATO report saying the pilots viewed the target with the naked eye (para. 64), the Committee does not ask why they did not use electronic verification equipment or how they could, in broad daylight, make a mistake about the nature of the convoy despite attacking it on five separate occasions. Some of the survivors told foreign reporters that cluster bombs had been used in the attack.

3. Attack on the central studio of the radio and television station in Belgrade. Reference has already been made to paragraph 45 of the Committee's report, where it is stated that NATO leaders, at a summit in Washington on 23 April 1999, decided to attack media installations.

In paragraph 74, the Committee quotes a statement issued by NATO on 8 April 1999 saying that the television studios would be attacked if they did not broadcast uncensored Western news reports for six hours a day. There can be no doubt then that NATO attacked the television studio in its role as a means of mass communication, causing the deaths of journalists and technicians, in violation of article 79 of Protocol I, which the Committee fails to mention.

However, the Committee attempts to show - following the line of reasoning adopted by NATO after the attack - that the television studio was an important part of the military communications network and that destroying it would be a major blow to that system.

The Committee concludes its consideration of this question by maintaining that the television studio was a legitimate target and that the number of civilian casualties was high but not clearly disproportionate (para. 77).

4. Attack on the Chinese Embassy. The Committee goes along with all the explanations given by NATO for its alleged "mistake" and does not question in the slightest the implausible explanations offered by NATO.

5. Attack on the village of Korisa. The foreign correspondents who were in Korisa immediately after the massacre of civilians saw no military equipment at all and one of them told French television that it was impossible to mistake that place for a military target. The explanations given by NATO were enough to convince the Committee that it was a legitimate military target (para. 89).

The Committee pretends not to realize that the attack on Korisa violated the provision in article 52 (3) of Protocol I, whereby, in case of doubt, an object which is normally dedicated to civilian purposes shall be presumed not to be used for military purposes.

In the view of the Committee, these are the five most controversial attacks. The Committee did not think it would be useful to examine the attacks on hospitals, although it does mention some of them at the beginning of the report.

Furthermore, the Committee ignores one of the most sickening episodes of the air war: the attack on the bridge in Varvarin one Sunday lunchtime. The first attack on the bridge killed and wounded several civilians and the second attack hit those giving first aid to the victims of the first attack. This was a "legitimate" target according to NATO.

IX. The Committee concludes the report by finding NATO's statements to be reliable and its explanations honest, and recommends that no investigation whatsoever should be initiated.

X. In the aforementioned conference held on 15 June at the University of Geneva, Ms. del Ponte announced that she had been requested to investigate some crimes attributed to the Kosovo Liberation Army (KLA), and said, without further explanation, that she would not do it

because with the ending of the war the Tribunal no longer had any jurisdiction in Kosovo. The Prosecutor pretends not to know that there is currently an internal armed conflict taking place in Kosovo and that the Tribunal is competent in accordance with its Statute, article 3 of the four Geneva Conventions and the Tribunal's own jurisprudence, which has defined internal armed conflicts.

XI. It can be concluded that, in order to justify the prevailing military doctrine, which is official policy in the United States and by extension within NATO (all-out war on the enemy, consisting of terrorizing the civilian population with daily and nightly bombings and completely destroying the civilian infrastructure, particularly key services such as water, electricity, hospitals, etc., without taking any risks (zero casualties), thereby systematically violating international humanitarian law), Ms. del Ponte's report ignores or distorts the facts and the applicable rules and legal writings, conceals evidence, contradicts itself by disregarding the elementary rules of logic and even questions the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia itself.

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Fifty-second session
Agenda item 4

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the International Council of Environmental Law, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 August 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

GE.00-14631 (E)

OBSERVATIONS ON THE RIGHT TO WATER AS A HUMAN RIGHT

Following an examination of State practice in respect of access to water, the European Council on Environmental Law (ECEL) concluded that "Each person has the right to water". In a resolution adopted in April 2000 (annexed hereto), ECEL specifies the content of the right to water, states that the right to water cannot be dissociated from other human rights that have already been recognized and invites Governments to take action to guarantee the right to water for all. The resolution takes up the theme of the Madeira Declaration[1] on the Sustainable Management of Water, in which ECEL stated the following principle: "No person may be deprived of the amount of water needed to meet his basic needs".

1. Scope of the right to water

The right to water concerns household access to a supply of water and to waste-water disposal facilities through a water service run by public or private bodies.

The right to water means guaranteeing a minimum quantity of water for everyone that is "sufficient for life and health", i.e. sufficient to meet basic needs such as drinking-water, cooking and hygiene, and for the small-scale production of family food crops (kitchen garden). This quantity probably exceeds 40 litres per person per day in cities in the industrialized countries but is far less than average per capita consumption in Europe (120 to 200 litres per day). The right to water does not extend to consumption beyond the quantity required to meet basic human needs, particularly water for agricultural production for household needs, nor does it extend to water for commercial, industrial or agricultural activities (irrigation).

2. The right to water is a human right

ECEL looked into the question of whether the right to water should be viewed as a human right. It considers that "the right of everyone to an adequate standard of living" recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights means that everyone should have access to the water to sustain his or her life. Moreover, the right to water cannot be dissociated from the right to sufficient food.

According to the Committee on Economic, Social and Cultural Rights, the human right to adequate housing includes the right to water. In 1996, the Heads of State and Government meeting at the Habitat II Conference agreed that everyone has to right of access to water supply and sanitation systems.

It follows from the recognition of the right to an adequate standard of living and to adequate food and housing as a human right that the right to water is also recognized as a human right. ECEL concludes that the **right to water already constitutes an integral part of officially recognized human rights**. There is therefore no reason to create a new human right to water.

The right to water is also closely bound up with the right to health recognized in article 12 of the International Covenant on Economic, Social and Cultural Rights and article 1 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

The right to water is explicitly mentioned in two existing international treaties, the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Convention on the Rights of the Child (1989). In addition, a regional instrument prepared under the auspices of the United Nations Economic Commission for Europe, the London Protocol on Water and Health (1999), states the principle of equitable access to water for all members of the population, and the Protocol of San Salvador (1988) relating to the Americas stipulates that everyone shall have "access to basic public services". The European Court of Human Rights ruled against deprivation of access to a well used for drinking water and the Inter-American Court of Human Rights ruled against the pollution of a river that served as a water supply for the Yanomanis.

Both for humanitarian reasons and on grounds of equity, it seems only right, when using a "shared heritage", that States, local authorities and water supply services should take steps to ensure that every individual, even the most disadvantaged, has the right to water. The smaller the number of persons excluded from the right to water, the lower will be the additional costs entailed by such action. According to D. Mitterrand, M. Soares and R. Petrella, "access to water for all is a possible right. No technological, economic, financial or political reason can be invoked to prevent its realization".

In the light of the above legal and economic arguments, ECEL has proposed to Governments that they explicitly recognize the right of everyone to water as a specific right that can be enforced by law and not as a mere aspiration or political goal.

3. Content of the right to water

Recognition of a human right to water entails the rights and obligations set out below.

(i) An individual right

The right to water means that everyone may demand access to a certain quantity of water of satisfactory quality to meet his or her basic needs. Access to water does not entail an obligation to connect everyone, regardless of location, to a water distribution network; it only means that every individual should have access to drinking water in his or her neighbourhood or should be authorized to establish a connection with a distribution network.

(ii) The responsibility of the public authorities

Irrespective of the form of water service management and the degree of involvement of private companies in the service, the public authorities must exercise control over the operations of the various public or private bodies involved in water service management. This includes, in particular, the financing of works, the quality of the water, continuity of the service, pricing, drafting of specifications, degree of treatment and user participation.

(iii) A service accessible to everyone

ECEL stresses the need to ensure appropriate water pricing and continuous access to water for all. This calls, in particular, for the following measures:

(a) Coverage of costs in such a way as to ensure continuity of the service (by fixing the price of water at a level that counterbalances the cost);

(b) A price that everyone can afford (by introducing special rates or aid measures with an equivalent impact in order to provide a limited quantity of water to the most disadvantaged).

The basic financial principle for water distribution through networks is that the cost of the "water service" should "be apportioned in such a way that each person can enjoy the right to water". The price paid for water could thus be adjusted to ensure that each user has access to water in accordance with his or her means. In short, the price of water should be affordable by every consumer.

This apportionment of costs among consumers should be conducted "in each corporate body responsible for the water service", for example in distribution companies or authorities. A larger-scale equalization scheme is also possible (at the county, region or State level).

4. Enforcement of the right to water

At the domestic level, the public authorities are usually bound by strict legal obligations concerning the supply of drinking water and the treatment of waste water. Members of the population may therefore compel the public authorities at the central, regional or local levels to honour their obligations in respect of water (environmental law, right to water, regulations governing hygiene, local authority obligations, etc.).

In addition, the public authorities can take various kinds of measures to promote access to water **for all** and to facilitate the full exercise of the individual right to water. Some of these measures are of particular benefit to the poor:

(a) Improvement of the availability of drinking water

- Protection of wells and the sources of drinking water of persons who are not connected to a water supply;
- Protection of water catchment areas;
- Improvement of the quality of water distributed;
- Extension of the distribution networks;
- Installation of free water points and public fountains;

- Prohibition of interruptions in water supply without a special procedure;

- Reduction in losses of drinking water (individual networks and sanitary installations).

(b) Payment for the water distributed

- Staggering of water payments over time;

- Reduction or abolition of the fixed or subscription cost component in the pricing system; use of a strictly volume-based pricing system;

- A "social" pricing system for the first portion;

- Specific targeted social assistance for disadvantaged groups;

- Budget appropriations and social funds to prevent water-supply cuts;

- Geographical equalization of water prices and a reduced VAT rate.

In countries such as Belgium, France and the United Kingdom, the public authorities have already adopted most of the above-mentioned measures and intend to change the pricing system for drinking water to benefit the poor.

5. Conclusion

Official recognition by Governments in the developed countries of the right to water as an integral component of the body of human rights that have already been recognized internationally will have only limited financial implications because the countries in question have already implemented the right to water on a very large scale. It would basically require States to give **greater attention in the future to the water-supply problems of the most disadvantaged** members of societies in which inequality is growing and the price of water is steadily increasing. New legislation is particularly necessary when the water service is run by private companies.

References

1. ECEL: Madeira Declaration on the Sustainable Management of Water, April 1999. Text published in *Environmental Policy and Law*, December 1999, *Revue européenne de droit de l'environnement*, 2000, and IUCN Environmental Law Programme Newsletter, Sept. Dec. 1999.

2. On the specific content of the right to water in industrialized countries, see Henri Smets: "De l'eau potable pour les pauvres", *Env. Pol. Law*, 2000, "Le droit à l'eau potable" in *L'eau aux XXIe siècle*, Futuribles, Paris, 2000, and "Implementing the right to drinking water in OECD countries", ENV/EPOC(99)13, OECD Seminar, Social and Environmental Interface, 2000.

ANNEX

RESOLUTION ON THE RIGHT TO WATER

The European Council on Environmental Law,

Conscious of the grave problems posed by access to drinking water, an essential element for the survival of man;

Considering that access to water is part of a sustainable development policy and cannot be regulated by market forces alone;

Considering that while water is an economic good, it is above all a social good;

Convinced that water resources constitute a common heritage and must be used in an equitable manner and managed in cooperation with the users in a spirit of solidarity;

Taking account of the International Covenant on Economic, Social and Cultural Rights (1966) according to which "[T]he States recognize (...) the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing" (art. 11.1) and "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (art. 12);

Considering that the right to water cannot be dissociated from the right to food and the right to housing which are recognized human rights and that the right to water is also closely linked to the right to health;

Taking account of the Protocol on Water and Health (1999) adopted in London in the framework of the Economic Commission of the United Nations for Europe, which refers to the principle of "equitable access to water" which should be provided for "all members of the population" (art. 5);

Mindful of the principles of the Madeira Declaration on the Sustainable Management of Water Resources, adopted by the ECEL, on 17 April 1999;

Observing that the greater part of the population of European countries already enjoys access to water at an affordable price;

Recognizing that access to water for all should be an important element in policies to combat poverty;

PROPOSES that Governments and competent international organizations explicitly recognize - in the national, community, and international frameworks - the right of each person to water according to the following principles;

1. Each person has the right to water in sufficient quantity and quality for his life and health;

2. Public authorities must adopt the necessary measures to facilitate access to water for all and exert control over the actions of the diverse bodies, public or private, operating in water service management;

3. In each corporate body responsible for the water service the costs of the service must be apportioned in such a way that each person can enjoy the right to water;

4. In the exercise of their activities, economic actors and individuals must respect the right to water;

RECOMMENDS that public authorities ensure that drinking water is appropriately priced by the bodies responsible for the service thereof so that this good can continue to be affordable to each person.

RECOMMENDS that a significant part of development aid be used for the supply of drinking water and waste water treatment in poorly equipped countries.

Rapporteur: Henri Smets

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Items 4 and 9 of the agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS

Written statement* submitted by Europe-Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 August 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Violations of the economic, social and cultural rights of landless peasants and the administration of justice in Brazil

The Europe-Third World Centre (CETIM) wishes to inform the Sub-Commission of its concerns in regard to the alarming human rights situation in Brazil, particularly for rural inhabitants.

Brazil is a country of 165 million inhabitants, as such representing the fifth largest population in the world and the fifth largest national territory. Although tremendously rich in natural resources, it is still regarded today as "the country of the future", given its failure to ensure a decent life for the majority of its citizens.

Five hundred years after the start of colonization by the Portuguese, the country continues to live with the shameful memory of the genocide of over 5 million indigenous inhabitants, the slavery of 2.5 million black Africans and the brutal repression of millions of workers and peasants who fought for their rights. An even greater symbol of shame than the past is the present: 3.2 million child workers do not attend school; 50 million Brazilians survive on less than US$ 2 per day; 30 million Brazilians are illiterate; 10 million are unemployed and 4 million peasant farmers have no land; 100,000 individuals are exploited in slavery-like working conditions; and 60 million Brazilians live a precarious existence without access to any form of sanitation.

The national project for integration of the poor has been abandoned by those in government. The accomplishment of land reform, which creates jobs, citizenship and democracy, is clearly not a priority for the country's leaders, despite the growing misery of the people and the increase in violence.

The economic model specifically adopted by the current Government of President Fernando Henrique Cardoso, which is entirely subject to the international financial asset base, allows no room for economic development of a more equitable nature. On the contrary, income is now more concentrated and poverty has increased. By preventing the distribution of income and wealth and the development of an internal market, this model has marginalized agriculture completely.

The result of this policy is visible, both on the streets and in the statistics: the cultivated area of land has decreased by 8 million hectares; the country has had to import agricultural produce at a cost of US$ 6.8 billion, whereas investment in agriculture has reached only US$ 4 billion (as opposed to US$ 19 billion during the period 1975-1979); per capita grain production fell from 522.15 kilograms in 1995 to 503 kilograms in 1999; the average income has declined by 46 per cent; in the past 10 years, 942,000 smallholdings (under 100 hectares) have fallen into bankruptcy; over the last five years, 2 million rural workers have lost their jobs; and millions are still constantly forced to migrate to the cities.

In this context, it is evidently crucial to have a serious policy of agricultural reform which ensures a genuinely democratic form of land ownership. The social compensation policy as run by the Government since 1995 is inadequate and widely disputed. Under this policy, families have been settled on plots of land situated mainly in the central west and northern regions of the

country (as in the case of 65 per cent of families which were "assentadas"). In these regions, land expropriation is synonymous with suspect activities involving large landowners. In addition, even though all land reform areas have been hard won through the organized fight of rural workers, such initiatives are widely publicized as a government feat.

Providing no defence for the legitimate claims of landless workers, the Government has relied on the World Bank to develop a new strategy of dismantling social and trade-union movements in rural areas through the Cédula da Terra programme and the creation of the Land Bank (Banco da Terra), two institutional forms of market-based land reform. These two programmes, both of which are components of the new policy known as "New Rural World", reverse two of the main social achievements enshrined in the Federal Constitution: the requirement to fulfil the social function of ownership and expropriation. The facts show that these programmes aim to make the switch from expropriation to the market, which is dominated by the large landowners who traditionally speculate in land, without State interference and without restriction in regard to social function.

In the five Brazilian states where Cédula da Terra has been introduced, the prices paid to farmers were always excessive and the land acquired was always the worst. Rural workers found themselves obliged to establish hierarchical associations, which were still further dependent on local oligarchies; peasant farmers are seriously in debt and are likely to become bankrupt within a few years. These two programmes, which operate on a sum of US$ 1 billion from the World Bank, will therefore exacerbate poverty in the rural areas of Brazil.

During this same period, the budget of 2.5 billion reals proposed for 1999 by the technicians of the National Institute of Settlement and Land Reform (INCRA) was cut by the Congress to 1.9 billion reals. Following agreements with the International Monetary Fund (IMF), this budget was further reduced to 1.2 billion reals. During the year, however, the Government approved the use of only 30 per cent of this figure, making it impossible to implement a policy which requires a sum of at least 8 billion reals annually.

The Landless Rural Workers Movement (MST), which organizes some 370,000 families (approximately 2 million individuals) country-wide, is heavily suppressed by the Government. A total of 2,800 MST-trained teachers are educating 110,000 children and 20,000 illiterate adults in the land reform areas, 81 cooperatives and 45 farm industries managed by workers (also MST-trained) are up and running, and the families concerned have a monthly income which is above the national average. Meanwhile, however, the Government has revived a law from the dictatorship intended to prosecute and imprison opponents of the regime (the National Security Law (LSN), No. 7.170/83). The Government specifically seeks the imprisonment of those occupying public land and their exclusion from any policy of land reform. However, in 1997, the Higher Court of Justice stated (Habeas corpus No. 5547/SP - 97.0010236-0, rapporteur: Minister Luiz Vicente Cernicchiaro) that "the Popular Movement aimed at establishing land reform cannot be regarded as a crime against property. It is a collective right, an expression of citizenship aimed at establishing a programme inherent to the Constitution of the Republic" and that the "preventive detention of the leaders of the Landless Rural Workers Movement (MST), on charges of forming a gang, disobedience and despoiling property, is inconsistent with the precept set forth in article 5, LXVI, of the Constitution" (Habeas corpus No. 9896/PR 99.0055128-1, president and rapporteur, Minister Vicente Leal, 1999).

Although rural workers are collectively engaged in ongoing efforts to win their rights as citizens, they are confronted with extreme violence, both from the armed militias of the large landowners and from the State police forces working in the service of the "latifundias". Since 1995, 1,169 workers or their defenders have been assassinated; only 58 defendants stood trial, four are in prison and seven are at large. Impunity is the rule and the majority of deaths occur among the extreme poor seeking their fundamental rights.

This violence is currently at its highest in the state of Paraná, in the south of the country, where the repression of workers verges on the barbaric: night-time operations to dislodge illegal occupations are carried out with extreme violence by masked and heavily armed policemen who terrorize and injure children, women and so on. The torture of hundreds of illegally arrested workers also warrants condemnation. Impunity reigns, even when the identity of those responsible for murdering workers is known; workers and their defenders receive death threats (as in the case of the lawyer for the Pastoral Land Commission, Darci Frigo, who is currently under police protection). The phone-tapping of MST offices and cooperatives also warrants condemnation here, as does the assassination on 2 May 2000 of the worker Antonio Tavares Pereira by the military police, who restricted the movement of workers by barring their entry to the capital, Curitiba. The President declared that it served as a warning for those who failed to demonstrate respect for "democratic order". In this operation, approximately 150 individuals were injured by police armed with gas bombs, who were accompanied by dogs and equipped with sub-machine guns and rubber and metal bullets. The scenes of police using batons to beat elderly individuals, children and adults wishing to claim frozen credits shocked Brazilian society, which is increasingly concerned over the Government's anti-democratic spiral.

In view of the above, the Europe-Third World Centre requests the Sub-Commission on the Promotion and Protection of Human Rights to recommend that, at its fifty-seventh session, the Commission on Human Rights should take all appropriate measures concerning the serious human rights violations in Brazil.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 2 of the agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement*/ submitted by the Indian Law Resource Centre,
a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 August 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. In this submission, the Indian Law Resource Center, on behalf of Western Shoshone individuals and groups, specifies for the Sub-Commission on the Promotion and Protection of Human Rights the grave violations that the United States (the "U.S.") is committing against the human rights and fundamental freedoms of the Western Shoshone people, and urges the Sub-Commission to take appropriate action.

Facts

2. The Western Shoshone are an indigenous people who have lived since time immemorial in a territory that is now included in Nevada and parts of California, Idaho and Utah. On these ancestral lands they continue to hunt, fish and graze cattle in accordance with their traditional, subsistence lifestyle. They also gather plants from the lands for medicinal and religious purposes and perform spiritual exercises at sacred sites. In 1863, the Western Shoshone signed a Treaty of Peace and Friendship (the "Treaty of Ruby Valley") with the U.S., in which the U.S. affirmed the boundaries of the Western Shoshone ancestral land. The treaty did not cede title to any Western Shoshone lands, but instead merely gave to the U.S. limited access and use for specified purposes.

3. Despite the Treaty of Ruby Valley, the U.S. is denying Western Shoshone rights to ancestral lands, having determined in a discriminatory manner that those rights have been extinguished. The proceedings upon which the U.S. relies for this assertion are those of the Indian Claims Commission (ICC), an administrative body created by the U.S. Congress in 1946 to partially compensate Native Americans for lands and resources that had been taken from them. In 1951, a claim was brought before this commission and concluded in the U.S. Court of Claims, purportedly on behalf of the entire Western Shoshone people. These proceedings resulted in a meagre monetary award for the presumed extinguishment of Western Shoshone title to land.

4. For the Western Shoshone, who continue to use and occupy those same lands, this decision was a travesty. The judgment funds have never been distributed because the Western Shoshone have refused to accept money for land that they never in fact sold, ceded, lost or abandoned. Furthermore, the issue of whether Western Shoshone land rights were truly extinguished was never actually litigated, and Western Shoshone individuals and groups were not permitted to intervene in the proceedings to contest the presumed extinguishment of title.

5. Based on this discriminatory determination, the U.S. is denying Western Shoshone people access to and use of ancestral lands. It is enforcing trespass and impoundment notices against the Western Shoshone, taking actions to physically remove their livestock, and prosecuting them for traditional fishing and hunting practices as well as other customary land uses. At the same time, the U.S. is allowing non-indigenous people to come onto and use those lands, often for purposes that severely harm the land, including gold mining, nuclear waste storage and military activities. The U.S. government's continued denial of Western Shoshone rights to ancestral lands threatens irreparable harm to Western Shoshone subsistence, culture and way of life.

6. The U.S. has escalated the threat against the Western Shoshone by recently beginning deliberations that are intended to lead to the passage of two legislative bills that would

critically impair the land, resource and cultural rights of the Western Shoshone people. The first bill would authorize the U.S. Secretary of Interior to dispose of supposedly "public" lands in the state of Nevada – including lands upon which the Western Shoshone rely – by selling it in open bidding to mining, ranching and other private interests. The second bill would distribute the monetary award for the purported extinguishment of Western Shoshone interests in land and thereby further undermine the assertion of those interests.

7. Various groups of the Western Shoshone people have sought to prevent the discriminatory actions of the U.S. in a variety of forums, to date without success. The Dann Band of Western Shoshone pursued a case through the U.S. court system to the United States Supreme Court. When that failed to bring relief, the Danns petitioned the Inter-American Commission on Human Rights, a body of the Organization of American States. That commission is still reviewing the case. On two occasions it has issued precautionary measures against the U.S., both of which the U.S. has largely ignored. The Yomba Shoshone and Ely Shoshone tribes have recently submitted a request for urgent action to the United Nations Committee on the Elimination of Racial Discrimination.

Violations of Internationally Recognized Human Rights and Fundamental Freedoms

8. The United States' actions violate the Western Shoshone peoples' rights of control and ownership of their ancestral lands, rights that are critical to Western Shoshone cultural and economic survival. The Universal Declaration of Human Rights states that "(e)veryone has the right to own property alone as well as in association with others," and that "(n)o one shall be arbitrarily deprived of his property." (article 17). Indigenous property rights on the basis of traditional use and occupancy are specifically recognized by International Labour Organisation Convention No. 169. (articles 13, 14, 15). Additionally, both the Draft United Nations Declaration on the Rights of Indigenous Peoples and the Proposed American Declaration on the Rights of Indigenous Peoples affirm the right of indigenous people to own, develop, control, and use the lands and resources they have traditionally owned.

9. The United States' discriminatory treatment of Western Shoshone rights in land and resources, as compared to its more favourable treatment of non-indigenous property rights, also violates articles 1, 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, to which the U.S. is a party. That Convention specifically addresses property rights, and mandates that "State parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... rights [including property rights]."

10. Furthermore, the lack of procedural safeguards, and the unequal processes for the Western Shoshone vis-vis what non-indigenous people ordinarily receive in the U.S. courts establish a violation of the right to judicial equality and due process. Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination states that "States parties shall assure to everyone within their jurisdiction effective protection and remedies...against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention..." The Universal Declaration of Human Rights states that "Everyone has the right to an effective remedy by the competent national

tribunals for acts violating the fundamental rights granted him by the constitution or by law." (article 10).

11. Western Shoshone culture, which is inextricably linked to the land, is also at imminent risk due to the United States' actions. The right to the enjoyment of one's culture is necessary to the effective exercise of human rights and is recognized internationally. Article 27 of the International Covenant on Civil and Political Rights, to which the United States is a party, affirms the right of persons belonging to "ethnic, linguistic or religious minorities..., in community with other members of their group, to enjoy their own culture, to profess and practise their own religion (and) to use their own language." The Human Rights Committee has found article 27 to protect indigenous peoples cultural interests in land and natural resources. (See Hum. Rts. Comm, General Comment on article 27).

12. The United States, moreover, is violating the Western Shoshone peoples' right to self-determination, by interfering with the Western Shoshone peoples' enjoyment of their ancestral lands, by depriving the Western Shoshone people of their means of subsistence, and by failing to adequately consult with the Western Shoshone people regarding any decisions affecting those ancestral lands. The right to self determination is affirmed in the International Covenant on Civil and Political Rights, which states that "(a)ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development...In no case may a people be deprived of its own means of subsistence." (article 1).

Request to the Sub-Commission

13. The Western Shoshone people urge the members of the Sub-Commission to take note of the serious nature of this situation and to call upon the United States to rescind immediately all impoundment and trespass notices against Western Shoshone people, to refrain from prosecuting Western Shoshone hunters, to take measures to ensure that mining and other activities on Western Shoshone ancestral land does not impede their physical and cultural survival, to withdraw the current proposed legislation described above, and to proceed forthwith to resolve Western Shoshone land issues through negotiations with Western Shoshone leaders.

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COMMISSION ON HUMAN RIGHTS
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Agenda item 3

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

Written statement* submitted by Agir ensemble pour les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 August 2000]

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* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Allow me to make an analogy and compare the Convention against Racism to a bridge. Someone who is planning a journey and knows he will have to cross a fast-flowing river will be delighted to know that the bridge exists, because he can see the possibility of arriving at his goal in time and in optimum conditions to carry out his plans. But it is not enough to know that the bridge exists. If all the stages along the route have been well prepared, crossing the bridge will be a moment of enlightenment, when he will feel the urge to look backwards in safety and hasten onwards, confident that he will reach his planned destination, where the sense of achievement will allow him to dream of continuing.

When we consider the statements, decisions and/or recommendations of the General Assembly, the Commission on Human Rights or the Sub-Commission aimed at ensuring the holding and the success of the Third World Conference against Racism, we realize that there has been an effort, perhaps not a very combined effort, to gather together reviews, studies and contributions in order to draw up a plan of action - the bridge - but that the essential stages for attaining that bridge have been reduced to the minimum.

Numerous Governments have assembled a large number of the instruments available at national and international level for the fight against racism, so that the various social sectors within each State are able learn about them and use them. In this way the State gives itself the opportunity to speed up the implementation of existing mechanisms and to review the obstacles that need to be overcome to reach the crossing-point - the Conference - in the deep conviction that it has the will and the means to achieve the aims set out in the provisional programme of the Conference. As regards the other part of society, the Plan of Action represents the concerted, credible and shared hope of joint activities in a genuine, persistent and enthusiastic struggle to eradicate all the glaring contemporary and historical evils of all human forms of discrimination and xenophobia.

Every day we are surprised and appalled by the madness of dehumanization, with a generous contribution from technology. In Colombia the paramilitaries have now set up a section called "Black Clover" for the purpose of killing people, black community groups. The victims, who are not the first because the total already exceeds 500, were the people of Sabaletas and Buenaventura in July 2000. This is an example of a discriminatory way of destroying the life and future of a people.

Ladies and Gentlemen, every day that no joint actions are carried out in the resolute battle against racism, the enemies of peace are given the opportunity to settle and spread their wings of discrimination and death, denying to majorities the right to enjoy well-being. Fear of sharing, selfishness, contempt for cultural diversity and the love of gain, put forward as the standard for rational survival, have sown the seeds of genocide and xenophobia throughout history.

Let us promote regional seminars that will provide access to knowledge and to the hidden and unadmitted reality of the discrimination and harming of many communities in the world, including the Afro-American communities.

We need to keep promoting the encounter of humankind, so that as a unified body, on the basis of respect for the difference and for human potential, we can keep our ears and eyes open for the heartbeats and manifestations of the Earth, a planet that does not belong to us, of which we are just a part, but which, blinded by hierarchies of wealth and poverty, not of sadness and joy, we are massacring: destroying the richness of life within a community that respects the ecosystem, destroying the dreams of the majority of the Earth's children, of all of us.

Let us promote greater participation by all sectors, so as to make the preparatory process for this Third World Conference against Racism into a genuine and worldwide daily act of solidarity in the struggle against all latent forms of discrimination, whether social, economic, environmental, political or ethnic, all of which are manifestations of cultural discrimination at global level.